

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:23-cv-08786-DDP (SK) Date: December 4, 2023
Title Rod Serp v. City of Los Angeles

Present: The Honorable: Steve Kim, United States Magistrate Judge

Connie Chung
Deputy Clerk

n/a
Court Reporter / Recorder

Attorneys Present for Plaintiff:
None present

Attorneys Present for Defendant:
None present

Proceedings: (IN CHAMBERS) SCREENING ORDER¹

Plaintiff Rod Serp seeks to pursue a federal suit nominally brought under 42 U.S.C. § 1983 against the City of Los Angeles. Because he is proceeding in forma pauperis, however, the court must screen his complaint to ensure it states a claim on which relief may be granted in federal court. *See* 28 U.S.C. § 1915(e)(2)(B). It does not. Plaintiff alleges that on November 19, 2019, Los Angeles Fire Department paramedics failed to properly treat his chest pain and refused to transport him to a hospital. (ECF 1 at 5, 7). But that allegation, even if true, amounts to no violation of an underlying *federal* right as needed to state a claim under § 1983. *See Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (Section 1983 “is not itself a source of substantive rights.”). At most, plaintiff’s allegation of improper medical care by local emergency paramedics adds up to personal injury or negligence claims under state law. *See, e.g.,* Cal. Health & Safety Code § 1799.106 (providing for civil damages suits against emergency medical personnel); *Wright v. City of Los Angeles*, 219 Cal. App. 3d 318, 345–46 (1990). The complaint here is thus subject to summary dismissal because it does not belong in federal court. *See, e.g., Broussard v. Alfaro*, 2017 WL 11635457, at *3–4 (C.D. Cal. Apr. 26, 2017) (dismissing § 1983 complaint alleging only underlying state law claims).

¹ This order is non-dispositive, so it is not immediately appealable. *See* Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A); *McKeever v. Block*, 932 F.2d 795, 799 (9th Cir. 1991). If plaintiff believes this order is dispositive, he must object to the order within 14 days. *See* Fed. R. Civ. P. 72(a), (b); L.R. 72-2.1; *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 & n.1 (9th Cir. 1996).

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For this reason, plaintiff is ORDERED TO SHOW CAUSE in writing by **December 18, 2023** why this action should not be dismissed for failure to state a federal claim on which relief may be granted in federal court. Plaintiff may discharge this order by filing a Notice of Voluntary Dismissal without prejudice using the attached form CV-09x, which would permit him to refile his suit in state court as appropriate.² If plaintiff files no timely notice of voluntary dismissal or other written response to this order, this action may be dismissed involuntarily for failure to prosecute and obey court orders. *See* Fed. R. Civ. P. 41(b); L.R. 41-1.

IT IS SO ORDERED.

² Nothing in this order is intended to suggest, however, that plaintiff's state law claims are necessarily free of procedural defects, including (for example) timeliness under the applicable statute of limitations. *See* Cal. Code Civ. Proc. §§ 335.1, 340. Those are issues that a state court must decide in the first instance if plaintiff files suit there.